IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4369 OF 2005

Shri. Nitin Bhikaji Nikam ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. Balkrishna D. Joshi for the Applicant.
Shri. A.S. Gadkari, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JULY 19, 2005.

P.C.:

1. Heard Advocate appearing for the Applicant and the learned A.P.P. for the State. The Applicant is the accused No.3. The Applicant was arrested on 23rd February, 2005 in connection with offences registered under sections 302, 201, 363, 364, 109 and 34 of the Indian Penal Code. Investigation is complete and the chargesheet has been filed.

2. The victim of the offence is one Kapil Lad who is allegedly a friend of one Raju Kulathe. The case of the prosecution is that the daughter of the accused No.1 was having relationship with the said Raju Kulathe and that was not liked by the accused No.1. The accused No.3, that is, the present Applicant is a cousin of the accused No.1 and he is a rickshaw driver by occupation.

3. The case of the prosecution is that the accused No.1 was desirous on taking revenge against said Raju. The case of the prosecution is that the Accused Nos.1 and 2 visited the office where the

deceased was working by the auto-rickshaw of the Applicant and took the deceased with them in the auto rickshaw The case of the prosecution is that as the deceased was not disclosing the whereabouts of Raju, the accused assaulted him.

4. The learned Advocate for the Applicant submitted that the Applicant has played no role in the offence and the only allegation against the Applicant is that the accused Nos.1 and 2 had taken the deceased in his auto-rickshaw. He submitted that infact the Applicant tried to prevent the accused Nos.1 and 2 from assaulting the deceased.

5. The learned A.P.P. submitted that witness Sunita Raskar has named the Applicant. He submitted that even the statement of two eye-witnesses namely, Sanjay Shinde and Vijay Shinde are sufficient to show the complicity of the Applicant. He submitted that the Applicant acted in conspiracy with the accused Nos.1 and 2. He, therefore, submitted that the Applicant is not entitled to relief.

6. I have considered the rival submissions. The witness Sunita Raskar is not an eye-witness to the incident. The witnesses Sanjay Shinde and Vijay Shinde are stated to be eye-witnesses. The allegation made by the said Sanjay is that the Accused Nos.1 and

2 made the deceased to drink liquor. The auto-rickshaw which was driven by the Applicant was stopped by the side of the road and the accused Nos.1 and 2 dragged the deceased out of the auto-rickshaw and started assaulting him by kicks and fist blows. All that the statement of witness Sanjay Shinde indicates is that the Applicant Nos.1 and 2 had taken deceased in auto-rickshaw of the Applicant and the Applicant was present at the time of the commission of offence. Witness Vijay's version is relied upon by the learned A.P.P. He has also described the assault by the accused Nos.1 and 2 on the person of the deceased. In fact, Vijay has stated that the Applicant was repeatedly pleading with the accused Nos.1 and 2 not to assault the deceased. Witness Vijay has stated that when one of the co-accused lifted the stone for assaulting the deceased, the witness and the Applicant snatched the said stone away from the co-accused Sunil.

7. Thus, the material on record shows that the Applicant was present at the scene of the offence and accused Nos.1 and 2 used the auto-rickshaw driven by the Applicant to bring the deceased to the spot of offence. However, at the spot of offence, it appears the Applicant did not participate in the assault, but, in fact tried to prevent the other two co-accused from assaulting the deceased. It is true that Section 34

of the Indian Penal Code has been applied. However, considering the role allegedly played by the Applicant as described by the prosecution witnesses and especially the prosecution witness Vijay Shinde, no purpose will be served by keeping the Applicant in detention after the chargesheet is filed. Hence, the Applicant is entitled to be enlarged on bail. Hence,

I pass the following order:

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with C.R.No.21 of 2005 of Niphad Police Station, subject to furnishing a personal bond of Rs.15,000/- with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will report to the local police station within whose jurisdiction the Applicant is residing on every Sunday at 11.00 a.m., till the conclusion of the trial.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

iv) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE